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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>Delaware</u>
Name (under which you were convicted): <u>Michael A. Benson</u>		Docket or Case No.: <u>9708021684</u>
Place of Confinement: <u>Delaware Correctional Center</u>		Prisoner No.: <u>233130</u>
Petitioner (include the name under which you were convicted) Respondent (authorized person having custody of petitioner) <u>Michael A. Benson</u> v. <u>Thomas Carroll, Warden</u> The Attorney General of the State of _____		

FILED

PETITION

FEB - 6 2006

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Superior Court Kent County 38 The Green Dover Delaware 19901
- (b) Criminal docket or case number (if you know): 9708021684
2. (a) Date of the judgment of conviction (if you know): August 18, 1998
- (b) Date of sentencing: December 4, 1998
3. Length of sentence: 78 years 75 mandatory
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: Three counts of Delivery, Two counts of possession w/ intent to Delivery, maintaining a dwelling, Trafficking cocaine, and possession of drug paraphernalia
6. (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Delaware Supreme Court

(b) Docket or case number (if you know): _____

(c) Result: Denied, Affirmed

(d) Date of result (if you know): June 1999

(e) Citation to the case (if you know): Del Supr. No 521

(f) Grounds raised: Attorney Filed Rule 26(e) No merit Appeal
No grounds raised

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Delaware Superior Court

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): April 30, 2001

(4) Nature of the proceeding: Post-Conviction Relief

(5) Grounds raised: Ineffective assistance of counsel, suppression hearing never heard, Insufficiency of evidence, Illegal sentencing

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: Denied

(8) Date of result (if you know): April 10, 2002

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Supreme Court Kent County

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: Pro se Appeal on Post-conviction Relief

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Dismissed

(8) Date of result (if you know): July 31, 2003

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: United State District Court for the District of Delaware

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: Appeal Supreme Court decision

(5) Grounds raised: Denial of Due Process 5th, 6th and 14th Amendment rights
Eccroneous State Court Adjudication violation of petitioners
6th and 14th United States Const. Amend. Rights, Denial of 14th Amendment
based on being convicted on insufficient evidence, Petitioner was
denied his right to counsel secured by the sixth Amendment and
the 14th

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: dismissed and relief requested denied

(8) Date of result (if you know): May 8, 2004

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: No opportunity to cross-examine the forensic chemist who prepared the drug toxicology report.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Jerome O. Herlihy Medical Examiner who prepared toxicology report became unavailable for reason's unknown. Counsel for Petitioner and Counsel for State denied Petitioner the right to cross-examine, under the United State Constitution 5th, 6th and 14th Amendment, by introducing the report into "as" evidence which clearly under Delaware Rules of Evidence 803.8 shows that the report is hearsay and not a business nor public document when introduce in a ~~criminal~~ criminal case.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Richard M. Baumeister couldn't file this issue because of the violation of his client right to effective assistance by siding with prosecution at trial.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Notice of Appeal

Name and location of the court where the motion or petition was filed: Delaware Supreme Court Kent County

Docket or case number (if you know): _____

Date of the court's decision: August 24, 2005

Result (attach a copy of the court's opinion or order, if available): Summarily Dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Delaware Supreme Court
Kent County

Docket or case number (if you know): 9708021684

Date of the court's decision: December 13, 2005

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO: Illegal Testimony Permitted

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The State called Arresting Officer DiGirolomo back to the witness stand to testify to Jerome O. Herlihy toxicology report. Officer DiGirolomo was able to testify concerning the past practice by medical Examiner Jerome O. Herlihy findings of unknown substance.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Richard M. Baummeister
couldn't file this issue because of the violation of his client right
to effective assistance by siding with prosecution at trial.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Notice of Appeal

Name and location of the court where the motion or petition was filed: Delaware Supreme
Court Kent County

Docket or case number (if you know): _____

Date of the court's decision: August 24, 2005

Result (attach a copy of the court's opinion or order, if available): Summarily Dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Delaware Supreme Court
Kent County

Docket or case number (if you know): 9708021684

Date of the court's decision: December 13, 2005

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

N/A

GROUND THREE: Illegal Admission of hearsay evidence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Superior Court in Kent County and Counsel violated Delaware Rule of Evidence 803(8) by admitting police officer to testify facts unknown to him. Each of Aforementioned issues in violation of Petitioners 5th, 6th and 14th Amendment Rights.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Richard M. Baumeister couldn't file this issue because of the violation of his client right to effective assistance by siding with prosecution at trial.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Notice of Appeal

Name and location of the court where the motion or petition was filed: Delaware Supreme Court Kent County

Docket or case number (if you know): _____

Date of the court's decision: August 24, 2005

Result (attach a copy of the court's opinion or order, if available): Summarily Dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Delaware Supreme Court Kent County

Docket or case number (if you know): 9708021634

Date of the court's decision: December 13, 2005

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

N/A

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Sandra Devo Esq.

(b) At arraignment and plea: Richard M. Baumeiste Esq. Public
Defender of the State of Delaware 530 S. State Street Suite 108
Dover, Delaware 19901

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: Petitioner seeks relief
for new trial or evidentiary hearing because of his Constitutional
5th, 6th and 14th Amendment Rights were violated during trial proceedings
or any other relief to which petitioner may be entitled.

MA

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
1/31/06 (month, date, year).

Executed (signed) on 1/31/06 (date).

Michael A. Benson

Signature of Petitioner

*(...continued)

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

IM Michael A. Benson

SBI# 233130 UNIT 21

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